IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1143 OF 2003
IN
ORIGINATING SUMMONS NO.447 OF 2003
IN
SUIT NO.738 OF 2003

Lyla Darlus Jehangir nee Lyla Ghaswala ..Plaintiff.

Vs.

B.Lentin & Ors. ..Defendants.

And

Mukesh Dhingra ..Applicant.

Mr.Shailesh Shah with Mr.Vastal shah i/b.C.N.Mehta for the Plaintiff.

Mr.Shyam Diwan with Mr.C.N.Kapadia with Ms.Bachani i/b.M/s.I.R.Joshi & Co. for the Defendants.

Mr.Sanjay Jain, Advocate for the Applicant in support.

CORAM: S.U.KAMDAR, J.
DATED: 13TH DECEMBER, 2004

P.C. :

The present application has been taken out by the Applicant inter-alia seeking an order that the Plaintiff should be directed to add the Applicant as a party to the Originating Summons.

2. The present Application is taken out on the ground that the orders passed in the present originating summons would likely to affect the rights of the Applicant. The Applicant is claiming

to be in occupation of bunglow at Pune under a lease executed by the Plaintiffs. According to him, he is in exclusive use, occupation, possession and enjoyment of the said property. It is his case that the opinion expressed by this Court in Originating Summons No.447 of 2003 pertaining to the rights of the Plaintiff in the said property is likely to affect his interest.

3. In my view, the present Chamber Summons is misconceived. The Originating Summons is taken out under the provisions of High Court (Original Side) Rules 245. In the Originating Summons, it is a settled law that the High Court does not pass any operative order affecting any rights of the parties but it only gives its opinion in terms of the Will or any other documents. Even if the opinion is express against the Plaintiff, still the rights of the Applicant are not determined until either of the parties obtain a decree against the Applicant according to the procedure known to law.

4. In view of the aforesaid fact the rights of the Applicant are in no way affected by the decision in the Originating Summons. Thus, the question of granting the present Chamber Summons does not arise.

The Chamber Summons is therefore dismissed. There shall be no order as to costs.